

HEALTH CARE SERVICES CONTRACT

This Contract, a professional services Contract under the law of the State of Delaware, is made this 3rd day of May, 2010, by and between MHM Correctional Services, Inc. ("MHM") and the State of Delaware Department of Correction ("DOC").

RECITALS

WHEREAS, DOC desires to procure professional healthcare services to serve the needs of the State of Delaware and its incarcerated offender population; and

WHEREAS, DOC has asked prospective vendors to submit proposals in relation to Contract No. 09024; and

WHEREAS, MHM submitted a proposal to provide certain health care services and such proposal was accepted by DOC;

NOW, THEREFORE, in consideration for the mutual promises contained herein, the parties enter into this Contract and each of the documents that comprise this Contract as specifically incorporated by reference herein and revoke any previous Contracts between the parties. All references to the "State", "Delaware", "DDOC", or the "Department of Correction" shall be deemed as references to DOC. All references to MHM, "MHM Services, Inc." or "MHM Correctional Services, Inc." shall be deemed as a reference to MHM. The terms and conditions of this Contract are contained within this DOC/MHM professional healthcare services Contract which shall include by reference the following documents:

- This Contract;

- DOC's Request for Proposals for Contract No. 09024 and any amendments thereto (Exhibit A);
- MHM's Letter of April 30, 2010 (Exhibit B)
- MHM's Proposal in Response to Exhibit A (Exhibit C).

NOW THEREFORE, DOC and MHM mutually agree as follows:

1. **Contract Term.** Subject to the other terms and provisions hereof, the initial term of this Contract will be for two (2) years commencing on July 1, 2010 (the "commencement date") and shall terminate, unless renewed, on June 30, 2012 (the "natural termination date"). The Contract may be renewed by DOC for two (2) additional one (1) year renewal periods.
2. **Contract Price.** DOC and MHM agree on an Annual Base Price of \$9,996,982.00 for Year One and \$10,296,891.00 for Year Two. MHM shall submit to DOC an invoice on or about the 1st day of each month commencing on August 1, 2010. Each invoice shall be for one twelfth (1/12) of the Annual Base Price due hereunder for each year (\$833,081.83 for Year One and \$858,074.25 for Year Two) of this Contract. DOC shall pay each invoice within 30 days of receipt. The amount of said monthly payment shall be subject to modification only as set forth in this Contract or as mutually agreed upon by the parties pursuant to a subsequent mutually-signed writing. Adjustments to compensation may occur only as set forth in this Contract, its exhibits, or attachments. Invoices shall be submitted in electronic format to:

John Oldigs
Senior Fiscal Administrative Officer
245 McKee Rd.
Dover, DE 19904

john.oldigs@state.de.us

3. ***Superseding Modifications.*** The following terms and conditions shall, in addition to the other paragraphs of this Contract, supersede any language in the Exhibits to this Contract:

A. MHM agrees to make its best efforts to fully utilize all available treatment beds available within DOC's facilities. Should the utilization of such beds fall below 90 percent capacity in any given month, MHM agrees that it will reduce its monthly invoice by \$5,000.00. This reduction will be listed on the next month's invoice as follows: "Adjustment to Compensation for Bed Utilization". The parties agree that DOC shall calculate the utilization of beds on a monthly basis. DOC agrees to provide the bed utilization calculation to MHM no later than 5 days prior to the end of the month. DOC, in its discretion, may toll or waive its right to any adjustments to compensation relating to Bed Utilization.

B. Should DOC exercise any option to renew this agreement as set forth in Paragraph 1, the parties agree that the Annual Base Price for any Renewal Year may be increased in an amount no greater than 3 percent of the previous year's Annual Base Price.

C. The Parties agree that DOC will conduct audits in relation to the Performance Measures set forth in Exhibit A and that under no circumstances shall DOC utilize data or information for such purposes which may be generated by MHM in relation to any of its peer review functions.

D. DOC agrees to toll any adjustment to compensation related to or occasioned by the Bed Utilization or Performance Measures until January 31, 2011. No data element collected prior to January 1, 2011 shall be utilized to support any adjustment to compensation.

E. Adjustments to compensation based on Performance Measures shall not be subject to any cure period.

F. Adjustments to compensation shall be assessed "per item", "per facility" basis.

G. MHM agrees that it shall be responsible for any and all charges related to telephone and data transmission lines set aside specifically for the use of MHM. DOC agrees to timely provide MHM with the invoices it receives for such services in order to facilitate prompt payment.

H. MHM, will hold harmless and indemnify the DOC, the State of Delaware and their agents, employees, or offices of the State of Delaware from any and all suits for damages including expenses and reasonable attorney fees and judgments, or settlements incurred by the DOC, the State of Delaware or their agents, employees, or officers resulting solely from their unconstitutional, deliberately indifferent, or negligent provision of services by MHM, its employees or subcontractors under the contract. MHM retains all its rights to retain counsel for its own defense, direct its own defense and to negotiate settlements for MHM, DOC, and DOC employees. This indemnity is limited to \$1 million for any one occurrence and in the aggregate in addition to the insurance coverages otherwise required by this Contract. It is the express intention of the parties that this indemnity shall apply only in the event any insurance is inapplicable or

exhausted. This indemnity shall survive the termination of this agreement with respect to any suits filed within one year after termination.

4. ***Major Equipment Purchases.*** The parties acknowledge that DOC shall pay for any equipment which may be necessary, required and requested by MHM under the operation of this Contract which individually exceeds \$500.00 per individual item. All equipment, supplies, and fixtures currently in place at or located within the facilities at which services shall be provided shall be made available to MHM at no cost to or credit against MHM in connection with the performance of its services hereunder. In addition, DOC shall provide at its cost and expense all reasonable maintenance services required and requested by MHM in connection with any equipment or any part of the facilities.

5. ***Adequate Performance Defined.*** The parties acknowledge and agree that minimally adequate performance under this Contract requires both a minimum level of staffing and the adequate provision of healthcare services. The adequacy of healthcare services and overall Contract performance shall be measured not only by the level of staffing but also by MHM's performance in relation to the audits set forth herein at Exhibit A and adherence to NCCHC standards and the policies of the DOC's Bureau of Correctional Healthcare Services. The Parties agree that staffing levels, audit performance, the maintenance of NCCHC accreditation, and adherence to the policies of the DOC's Bureau of Correctional Healthcare Services are each material terms of this Contract.

6. ***Legal Requirements.*** MHM shall maintain all legally required licenses, certifications, insurance coverages, as well as the performance bond required herein, as not otherwise stated by this Contract, during the entire term of this Contract.

7. ***Expense of Performance.*** Unless provided otherwise in this Contract, all expenses incurred in the performance of the services are to be paid by MHM. If this Contract specifically provides for expense reimbursement, MHM shall be reimbursed only for reasonable expenses incurred by MHM in the performance of the services.
8. ***State Sovereignty.*** Delaware is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Contract.
9. ***Acceptance; Non-Waiver.*** Permitted or required approval by Delaware of any services furnished by MHM shall not in any way relieve MHM of responsibility for the professional and technical accuracy and adequacy of its work. DOC's review, approval, acceptance, or payment for any of MHM's services herein shall not be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and MHM shall be and remain liable in accordance with the terms of this Contract and applicable law for all damages to Delaware caused by MHM's performance or failure to perform under this Contract.
10. ***Reservation of Rights.*** The rights and remedies of Delaware provided for in this Contract are in addition to any other rights and remedies provided by law.
11. ***Confidentiality.*** To the extent permissible under federal law and 29 Del. C. § 10001, *et seq.*, the parties to this Contract shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Contract.

12. *Independent Contractor; Employment Decisions.* MHM has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by MHM in the performance of the services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor DOC's request relating to specific individuals.

13. *Independent Contractor; Generally.* It is understood that in the performance of the services herein provided for, MHM shall be, and is, an independent Contractor, and is not an agent or employee of Delaware and shall furnish such services in its own manner and method except as required by this Contract. In addition to its responsibilities under as set forth in Exhibit A, MHM shall be solely responsible for, and shall indemnify, defend and save Delaware harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever. MHM acknowledges that MHM and any subcontractors, agents or employees employed by MHM shall not, under any circumstances, be considered employees of Delaware, and that they shall not be entitled to any of the benefits or rights afforded employees of Delaware, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. Delaware will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of Delaware or any of its officers, employees or other agents. MHM shall be responsible for providing necessary liability insurance for itself and its personnel. As an independent

Contractor, MHM has no authority to bind or commit Delaware. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the parties for any purpose.

14. ***Multi-Source Vendor Cooperation Essential.*** The State of Delaware has chosen to employ a multi-source solution to the provision of offender healthcare services. MHM has been selected to provide a vital, critical, and essential portion of the total healthcare services to be provided to the State of Delaware's incarcerated population. In addition to MHM, other vendors have been selected to provide other critical healthcare functions. Communication and cooperation between such vendors, including MHM, is absolutely essential and of the highest order of materiality. MHM agrees and warrants that it shall provide absolute cooperation with any other healthcare services vendor providing services to DOC and the State of Delaware offender population.

15. ***Severability.*** If any term or provision of this Contract is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Contract, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and Contracts of the parties herein set forth.

16. ***State Appropriations Mandatory Condition of State Performance.*** Validity and enforcement of this Contract is subject to appropriations by the General Assembly of the State of Delaware of the specific funds necessary for Contract performance. Should such

funds not be so appropriated Delaware may immediately terminate this Contract, and absent such action this Contract shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which an appropriation is available or upon the exhaustion of funds. Notwithstanding any other provisions of this Contract, this Contract shall terminate and Delaware's obligations under it shall be extinguished at the start of the fiscal year in which Delaware fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

17. ***Termination for Cause.*** If for any reason, or through any cause, the Vendor fails to fulfil in timely and proper manner its obligations under the Contract, or if the Vendor violates any of the covenants, Contract or stipulations of the Contract, the DOC shall thereupon have the right to terminate the Contract by giving written notice to the Vendor of such failure and demand that such failure be cured within 30 days. If such obligations, covenants, Contracts or stipulations are not cured to the satisfaction of DOC within 30 days from the date of the notice, DOC may terminate the Contract with the Vendor by providing a termination date no shorter than 90 days from the date the Vendor's attempts at a cure have failed. In that event, all finished or unfinished documents, charts, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Vendor under the Contract shall, at the option of the DOC, become its property, and the Vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is useable to the DOC. In the event of a termination for cause, MHM agrees that it will not be

entitled to any compensation, whether equitable or monetary, related to any unexecuted portion of this Contract.

18. *Termination for Convenience.* Either party may terminate the Contract at any time by giving written notice of such termination and specifying the effective date thereof, at least one hundred and twenty (120) days before the effective date of such termination. In that event, all finished or unfinished documents, charts, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Vendor under the Contract shall, at the option of the DOC, become its property, and the Vendor shall be entitled to compensation for any satisfactory work completed on such documents and other materials which is useable to the DOC. If the Contract is terminated by the DOC as so provided, the Vendor will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Vendor as covered by the Contract, less payments of compensation previously made. Provided however, that if less than 60 percent of the services covered by the Contract have been performed upon the effective date of termination, the Vendor shall be reimbursed (in addition to the above payment) for that portion of actual out of pocket expenses (not otherwise reimbursed under the Contract) incurred by the Vendor during the Contract period which are directly attributable to the uncompleted portion of the services covered by the Contract. In the event of a termination for convenience, MHM agrees that it will not be entitled to any compensation, whether equitable or monetary, related to any unexecuted portion of this Contract.

19. ***Non-Waiver.*** The delay or failure by either party to exercise or enforce any of its rights under this Contract shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

20. ***Public Records; DOC's Right to Inspect.*** MHM shall maintain all public records, as defined by 29 *Del. C.* § 502, relating to this Contract and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Contract, authorized representatives of Delaware may inspect or audit MHM' performance and records pertaining to this Contract at the MHM business office during normal business hours.

21. ***Proof of Insurance.*** Before any work is done pursuant to this Contract, the Certificate of Insurance and/or copies of the insurance policies, referencing the Contract number stated herein, shall be filed with the State. The certificate holder is as follows: James Welch, Department of Correction. In no event shall the State of Delaware be named as an additional insured on any policy required under this Contract. MHM warrants that the amounts of insurance required by this Contract will remain in full force and effect during the full term of this Contract without lapse or diminution of required coverage limitations.

22. ***Choice of Law and Venue.*** The laws of the State of Delaware shall apply, except where federal law has precedence. MHM consents to jurisdiction and venue within the State of Delaware. MHM must remain in good financial standing with the State of Delaware.

23. ***Contract Contents; Documents and Order of Authority.*** The following documents contain the essential and material terms of the Contract between DOC and MHM:

- 1) This Contract;
- 2) The DOC Request for Proposals for Contract No. 09024 and any amendments thereto (Exhibit A);
- 3) MHM's Letter of April 30, 2010 (Exhibit B);
- 4) MHM's Proposal in Response to Exhibit A (Exhibit C).

In the event of a conflict, contradiction, vagueness and/or ambiguity with respect to or in relation to the contents of the above-listed documents, the above-listed numerical order shall dictate and control the terms of this Contract such that the authority of each successive document is controlled by the preceding document, with this Contract containing the highest level of authority.

24. ***Entire Agreement; Interpretation; Modification.*** This Contract and its Appendices shall constitute the entire Contract between DOC and MHM with respect to the subject matter of this Contract and shall not be modified or changed without the express written consent of the parties. The provisions of this Contract supersede all prior oral and written quotations, communications, Contracts and understandings of the parties with respect to the subject matter of this Contract. If the scope of any provision of this Contract is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Contract shall not thereby fail, but the scope of such

provision shall be curtailed only to the extent necessary to conform to the law. No waiver of any provision of this Contract shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

25. **Joint Drafters.** This Contract was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the plain and fair meaning thereof.

IN WITNESS WHEREOF, the parties have set their hands and seals hereto as of the day and year first above written.

STATE OF DELAWARE,
DEPARTMENT OF CORRECTION

By: [Signature]

Print Name: Carl C. Danberg

Title: Commissioner

Date: 3 May 2010

MHM CORRECTIONAL SERVICES, INC.

By: [Signature]

Print Name: Steven H. Wheeler

Title: President / COO

Date: May 3, 2010